

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL DAVID JOHNSON, P80888,

Petitioner,

v.

RON DAVIS, Warden,

Respondent.

Case No. [19-cv-04341-CRB](#) (PR)

**ORDER DISMISSING PETITION
FOR A WRIT OF HABEAS
CORPUS FOR FAILURE TO
EXHAUST**

(ECF No. 3)

Petitioner, a state prisoner incarcerated at San Quentin State Prison, seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging the Alameda County Superior Court's April 30, 2019 denial of his request to recall his indeterminate life sentence under recently-amended California Penal Code section 1170(d). Prisoners in state custody who wish to challenge collaterally in federal habeas corpus proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b)-(c). Petitioner has not done so. He has not presented the Supreme Court of California with an opportunity to consider and rule on his claims. See O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999) (state's highest court must be given opportunity to rule on claims even if review is discretionary). The petition for a writ of habeas corpus therefore is DISMISSED without prejudice to filing a new petition after state judicial remedies are exhausted.

Based on his affidavit of poverty, petitioner's application to proceed in forma pauperis under 28 U.S.C. § 1915 (ECF No. 3) is GRANTED. The clerk shall close the file.

IT IS SO ORDERED.

Dated: December 13, 2019



CHARLES R. BREYER
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL DAVID JOHNSON,
Plaintiff,

v.

PEOPLE FOR THE STATE OF
CALIFORNIA,
Defendant.

Case No. 3:19-cv-04341-CRB

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 13, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Paul David Johnson ID: P-80888
San Quentin State Prison 2-N9UP
San Quentin, CA 94974

Dated: December 13, 2019

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable CHARLES R. BREYER